

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALMETA HOWELL,

Index No.: 08-cv-6566

Plaintiff,

Verified Answer

-against-

MARRIOTT INTERNATIONAL d/b/a WESTCHESTER
MARRIOTT,

Defendant.

-----X

Defendant, Marriott International d/b/a Westchester Marriot, by its attorneys,
CAMACHO MAURO MULHOLLAND, LLP, as and for a verified answer to the plaintiff's
verified complaint, respectfully alleges:

1. Denies knowledge and information sufficient enough to form a belief as to the truth of this allegation.
2. Denies knowledge and information sufficient enough to form a belief as to the truth of this allegation.
3. Denies and leaves all matters of law to the Honorable Court.
4. Denies and leaves all matters of law to the Honorable Court.
5. Denies and leaves all matters of law to the Honorable Court.
6. Denies and leaves all matters of law to the Honorable Court.
7. Denies and leaves all matters of law to the Honorable Court.
8. Denies and leaves all matters of law to the Honorable Court.
9. Denies and leaves all matters of law to the Honorable Court.
10. Denies knowledge and information sufficient enough to form a belief as to the truth of this allegation.

11. Denies knowledge and information sufficient enough to form a belief as to the truth of this allegation and leaves all matter of law to the Honorable Court.
12. Denies.
13. Denies.
14. Denies.
15. Denies.
16. Denies.
17. Denies.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The defendant(s) not being fully advised as to all the facts and circumstances surrounding the incident complained of, hereby assert and reserve unto themselves the defenses of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense which the further investigation of this matter may prove applicable herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The complaint fails to state a claim upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Pursuant to CPLR Article 16, the liability of defendant, Marriott International d/b/a Westchester Marriot, to the plaintiff herein for non-economic loss is limited to

defendant, Marriott International d/b/a Westchester Marriot, equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. Plaintiff(s) have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff(s) shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff(s), then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiff may have failed to mitigate damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Plaintiff's alleged loss and damage, if any, resulted wholly and solely from the fault, neglect and want of care of the Plaintiff or persons or parties other than Defendant, for whose acts said Defendant is not liable or responsible and not as a result of any negligence.

AS AND FOR A EIGHT AFFIRMATIVE DEFENSE

25. This defendant is entitled to a set-off if any tortfeasor has or will settle with plaintiffs pursuant to G.O.L. 15-108.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. That the plaintiff could with due diligence have obtained personal jurisdiction over tortfeasors not made parties to this lawsuit and thus the culpability of such missing or absent tortfeasors is to be apportioned into the total culpability allegedly causing the subject occurrence.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. That by entering into the activity in which the plaintiff(s) was engaged at the time of the occurrence set forth in the complaint, said plaintiff(s) knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff(s) herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff(s) in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

28. Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

29. The injuries sustained by plaintiff, if any, were not proximately caused by any act of omission of answering defendant.


AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

30. The complaint must be dismissed, as answering defendant owed no duty to plaintiff.

WHEREFORE, defendant, Marriott International d/b/a Westchester Marriot demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
July 22, 2008

CAMACHO MAURO MULHOLLAND, LLP



Andrea Sacco Camacho, Esq. (AES-5719)
Attorneys for Defendant
350 Fifth Avenue - Suite 5101
New York, New York 10118
(212) 947-4999
Our File No.: MRTTY-2066-A

To: (See Affidavit attached)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Andrea Sacco Camacho, being duly sworn, deposes and says:

That he/she is the attorney for the defendant(s) in the within action; that he/she has read the within Answer and knows the contents thereof, and that same is true to his/her own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he/she believes it to be true.

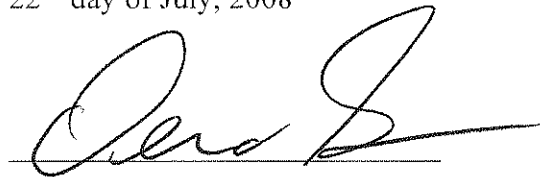
That the sources of his/her information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant(s) is that the defendant(s) is not within the county where deponent has his/her office.



Andrea Sacco Camacho, Esq.

Sworn to before me this
22nd day of July, 2008



DENA M. SERRANO
Notary Public, State of New York
No. 01SE6042630
Qualified in Kings County
Commission Expires May 30, 2010

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

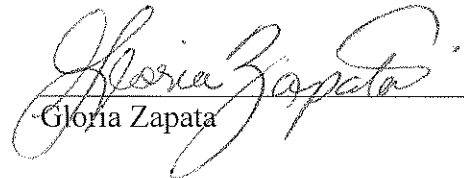
Gloria Zapata, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Brooklyn, New York.

That on 22nd day of July, 2008, deponent served the within **Verified Answer** upon the attorneys/individuals listed below, at his/her/its addresses which were so designated by said attorneys for said purpose, by depositing a true copy of same enclosed in a post paid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York:

TO:

Matthew A. Sosnik, Esq.
125-10 Queens Boulevard – Suite 15
Kew Gardens, New York 11415
(212) 744-9577
Attorneys for Plaintiff


Gloria Zapata

Sworn to before me this
22nd day of July, 2008



DENA M. SERRANO
Notary Public, State of New York
No. 01SE6042630
Qualified in Kings County
Commission Expires May 30, 2010

JS 44C/SDNY
REV. 1/2008

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Almeta Howell

DEFENDANTS

Marriott International d/b/a Westchester Marriott

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mathew A. Sosnik
Law Office of Mathew A. Sosnik
125-10 Queens Blvd, Suite 15
Kew Gardens, New York 11415

ATTORNEYS (IF KNOWN)

Andrea Sacco Camacho
Camacho Mauro Mulholland
350 Fifth Avenue, Suite 5101
New York, New York 10118

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. §1332

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- [] 110 INSURANCE
[] 120 MARINE
[] 130 MILLER ACT
[] 140 NEGOTIABLE INSTRUMENT
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
[] 151 MEDICARE ACT
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
[] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
[] 160 STOCKHOLDERS SUITS
[] 190 OTHER CONTRACT
[] 195 CONTRACT PRODUCT LIABILITY
[] 196 FRANCHISE

REAL PROPERTY

- [] 210 LAND
[] 220 CONDEMNATION
[] 230 FORECLOSURE RENT LEASE & EJECTMENT
[] 240 TORTS TO LAND
[] 245 TORT PRODUCT LIABILITY
[] 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY

- [] 310 AIRPLANE
[] 315 AIRPLANE PRODUCT LIABILITY
[] 320 ASSAULT, LIBEL & SLANDER
[] 330 FEDERAL EMPLOYERS' LIABILITY
[] 340 MARINE
[] 345 MARINE PRODUCT LIABILITY
[] 350 MOTOR VEHICLE
[] 355 MOTOR VEHICLE PRODUCT LIABILITY
[x] 360 OTHER PERSONAL INJURY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- [] 441 VOTING
[] 442 EMPLOYMENT
[] 443 HOUSING/
[] 444 ACCOMMODATIONS
[] 445 WELFARE
[] 446 AMERICANS WITH DISABILITIES - OTHER
[] 440 OTHER CIVIL RIGHTS

PERSONAL INJURY

- [] 362 PERSONAL INJURY - MED MALPRACTICE
[] 365 PERSONAL INJURY PRODUCT LIABILITY
[] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY
[] 370 OTHER FRAUD
[] 371 TRUTH IN LENDING
[] 380 OTHER PERSONAL PROPERTY DAMAGE
[] 385 PROPERTY DAMAGE PRODUCT LIABILITY

PRISONER PETITIONS

- [] 510 MOTIONS TO VACATE SENTENCE
[] 530 HABEAS CORPUS
[] 535 DEATH PENALTY
[] 540 MANDAMUS & OTHER
[] 550 CIVIL RIGHTS
[] 555 PRISON CONDITION

FORFEITURE/PENALTY

- [] 610 AGRICULTURE
[] 620 OTHER FOOD & DRUG
[] 625 DRUG RELATED SEIZURE OF PROPERTY
[] 630 LIQUOR LAWS
[] 640 RR & TRUCK
[] 650 AIRLINE REGS
[] 660 OCCUPATIONAL SAFETY/HEALTH
[] 690 OTHER

LABOR

- [] 710 FAIR LABOR STANDARDS ACT
[] 720 LABOR/MGMT RELATIONS
[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
[] 740 RAILWAY LABOR ACT
[] 790 OTHER LABOR LITIGATION
[] 791 EMPL RET INC SECURITY ACT

IMMIGRATION

- [] 462 NATURALIZATION APPLICATION
[] 463 HABEAS CORPUS- ALIEN DETAINEE
[] 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- [] 422 APPEAL
28 USC 158
[] 423 WITHDRAWAL
28 USC 157

PROPERTY RIGHTS

- [] 820 COPYRIGHTS
[] 830 PATENT
[] 840 TRADEMARK

SOCIAL SECURITY

- [] 861 HIA (1395ff)
[] 862 BLACK LUNG (923)
[] 863 DIWC/DIWW (405(g))
[] 864 SSID TITLE XVI
[] 865 RSI (405(g))

FEDERAL TAX SUITS

- [] 870 TAXES (U.S. Plaintiff or Defendant)
[] 871 IRS-THIRD PARTY
26 USC 7609

OTHER STATUTES

- [] 400 STATE REAPPORTIONMENT
[] 410 ANTITRUST
[] 430 BANKS & BANKING
[] 450 COMMERCE
[] 460 DEPORTATION
[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[] 480 CONSUMER CREDIT
[] 490 CABLE/SATELLITE TV
[] 810 SELECTIVE SERVICE
[] 850 SECURITIES/COMMODITIES/EXCHANGE
[] 875 CUSTOMER CHALLENGE
12 USC 3410
[] 890 OTHER STATUTORY ACTIONS
[] 891 AGRICULTURAL ACTS
[] 892 ECONOMIC STABILIZATION ACT
[] 893 ENVIRONMENTAL MATTERS
[] 894 ENERGY ALLOCATION ACT
[] 895 FREEDOM OF INFORMATION ACT
[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Bronx County, New York

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Marriott International, Inc.
10400 Fernwood Rd.
Bethesda, MD
Montgomery County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO
☐ YES (DATE ADMITTED Mo. 11 Yr. 1996)
 Attorney Bar Code # AES-5719

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALMETA HOWELL,

Index No.: 08-cv-6566

Plaintiff,

Rule 7.1 Statement

-against-

MARRIOTT INTERNATIONAL d/b/a WESTCHESTER
MARRIOTT,

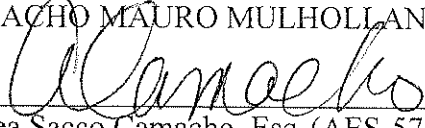
Defendant.
-----X

Andrea Sacco Camacho, a member of the law firm of Camacho Mauro Mulholland, LLP, attorneys for defendant MARRIOTT INTERNATIONAL d/b/a WESTCHESTER MARRIOTT, pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, identify the following entities as parent corporations or any publicly traded corporations that own ten percent or more of the stock of those defendant:

1. None.

Dated: New York, New York
July 22, 2008

CAMACHO MAURO MULHOLLAND, LLP


Andrea Sacco Camacho, Esq. (AES-5719)

Attorneys for Defendant

350 Fifth Avenue - Suite 5101

New York, New York 10118

(212) 947-4999

Our File No.: MRTTY-2066-A

To: (See Affidavit attached)

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COUNTY OF NEW YORK) ss:


Gloria Zapata, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Brooklyn, New York.

That on 22nd day of July, 2008, deponent served the within **Rule 7.1 Statement** upon the attorneys/individuals listed below, at his/her/its addresses which were so designated by said attorneys for said purpose, by depositing a true copy of same enclosed in a post paid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York:

TO:

Matthew A. Sosnik, Esq.
125-10 Queens Boulevard – Suite 15
Kew Gardens, New York 11415
(212) 744-9577
Attorneys for Plaintiff


Gloria Zapata

Sworn to before me this
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